

# EXHIBIT A

1 Kenneth A. Gallo (*pro hac vice*)  
Paul D. Brachman (*pro hac vice*)  
2 **PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP**  
2001 K Street, NW  
3 Washington, DC 20006-1047  
Telephone: (202) 223-7300  
4 Facsimile: (202) 204-7420  
Email: kgallo@paulweiss.com  
5 Email: pbrachman@paulweiss.com

6 William B. Michael (*pro hac vice*)  
Crystal L. Parker (*pro hac vice*)  
7 Daniel A. Crane (*pro hac vice*)  
**PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP**  
1285 Avenue of the Americas  
8 New York, NY 10019-6064  
Telephone: (212) 373-3000  
9 Facsimile: (212) 757-3990  
Email: wmichael@paulweiss.com  
10 Email: cparker@paulweiss.com  
11 Email: dcrane@paulweiss.com

12 Joshua Hill Jr. (SBN 250842)  
**PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP**  
13 535 Mission Street, 24th Floor  
San Francisco, CA 94105  
14 Telephone: (628) 432-5100  
Facsimile: (628) 232-3101  
15 Email: jhill@paulweiss.com

16 *Attorneys for Defendant Intuitive Surgical, Inc.*

17 [Additional counsel listed on signature page]

18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**  
20 **SAN FRANCISCO DIVISION**

21 **IN RE DA VINCI SURGICAL ROBOT**  
22 **ANTITRUST LITIGATION**

23 This Document Relates to:  
24 ALL ACTIONS.  
25

Lead Case No. 3:21-cv-03825-AMO

**DEFENDANT'S RESPONSE TO  
PLAINTIFFS' STATEMENT OF  
RECENT DECISION**

The Honorable Araceli Martínez-Olguín

On June 18, 2024, Plaintiffs submitted a Statement of Recent Decision—Judge Thompson’s June 17, 2024 decision in *Lambrix v. Tesla, Inc.*, No. 3:23-cv-01145 (“*Lambrix II*”), which reverses Judge Thompson’s earlier decision and holds that, where a plaintiff establishes market power in the foremarket, it does not have to satisfy the four factors for proving single-brand aftermarkets established by the Ninth Circuit in *Epic, Inc. v. Apple, Inc.*, 67 F.4th 946 (9th Cir. 2023). *See* Dkt. 276, 276-1.

Plaintiffs are wrong in asserting that *Lambrix II* “squarely addresses Intuitive’s argument in support of its motion for reconsideration of this Court’s grant of partial summary judgment in Plaintiff’s favor.” Dkt. 276 at 1:10-11. As set forth in Intuitive’s reply brief, the primary thrust of Intuitive’s Motion for Reconsideration is that, given the Court’s ruling *denying* summary judgment for Plaintiffs on market definition and power as to the primary market, Plaintiffs have *not* established a separate, single-brand aftermarket under their own (erroneous) view of the law. Dkt. 271 at 1-2. As Intuitive argued, the Court should grant reconsideration “[o]n that basis alone.” *Id.* at 2:2. If the separate issue raised by *Lambrix II* is not mooted by developments in this case or clarified by additional Ninth Circuit authority, whether to follow *Lambrix II* should be deferred until a later date with the benefit of full briefing and argument.

Should that occasion arise, Intuitive looks forward to showing that Judge Thompson got it right the first time and that her recent decision conflicts with the Ninth Circuit’s decision in *Coronavirus Reporter v. Apple, Inc.*, 85 F.4th 948 (9th Cir. 2023), which applied the *Epic Games* factors to dismiss a complaint even though the plaintiff alleged a monopoly in the foremarket. *See* Dkt. 271 at 3:3-7. Moreover, allowing single-brand aftermarkets whenever the plaintiff establishes market power in the tying market would revolutionize tying law. In every tying case, the plaintiff must prove market power in the tying market. *Illinois Tool Works v. Independent Ink*, 547 U.S. 28, 46 (2006). The *Lambrix II* ruling would turn proof of that element into an automatic dispensation from proving another required element—a relevant market for the tied product. In any event, *Lambrix II* does not affect Intuitive’s pending Motion for Reconsideration, and this Court may never need to reach the separate issue it addresses.

1 Dated: June 20, 2024

By: /s/ Kenneth A. Gallo  
Kenneth A. Gallo

2  
3 Kenneth A. Gallo (*pro hac vice*)  
4 Paul D. Brachman (*pro hac vice*)  
5 **PAUL, WEISS, RIFKIND, WHARTON &**  
6 **GARRISON LLP**  
7 2001 K Street, NW  
Washington, DC 20006-1047  
Telephone: (202) 223-7300  
Facsimile: (202) 204-7420  
Email: kgallo@paulweiss.com  
Email: pbrachman@paulweiss.com

8 William B. Michael (*pro hac vice*)  
9 Crystal L. Parker (*pro hac vice*)  
10 Daniel A. Crane (*pro hac vice*)  
11 **PAUL, WEISS, RIFKIND, WHARTON &**  
12 **GARRISON LLP**  
13 1285 Avenue of the Americas  
New York, NY 10019-6064  
Telephone: (212) 373-3000  
Facsimile: (212) 757-3990  
Email: wmichael@paulweiss.com  
Email: cparker@paulweiss.com  
Email: dcrane@paulweiss.com

14 Joshua Hill Jr. (SBN 250842)  
15 **PAUL, WEISS, RIFKIND, WHARTON &**  
16 **GARRISON LLP**  
17 535 Mission Street, 24th Floor  
San Francisco, CA 94105  
Telephone: (628) 432-5100  
Facsimile: (628) 232-3101  
Email: jhill@paulweiss.com

19 Sonya D. Winner (SBN 200348)  
20 **COVINGTON & BURLING LLP**  
21 415 Mission Street, Suite 5400  
San Francisco, California 94105-2533  
Telephone: (415) 591-6000  
Facsimile: (415) 591-6091  
Email: swinner@cov.com

23 Kathryn E. Cahoy (SBN 298777)  
24 **COVINGTON & BURLING LLP**  
25 3000 El Camino Real  
5 Palo Alto Square, 10th Floor  
Palo Alto, California 94306-2112  
Telephone: (650) 632-4700  
Facsimile: (650) 632-4800  
Email: kcahoy@cov.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Andrew Lazerow (*pro hac vice*)  
**COVINGTON & BURLING LLP**  
One City Center 850 Tenth Street NW  
Washington DC 20001-4956  
Telephone: (202) 662-6000  
Facsimile: (202) 662-6291  
Email: alazerow@cov.com

Allen Ruby (SBN 47109)  
**ALLEN RUBY, ATTORNEY AT LAW**  
15559 Union Ave. #138  
Los Gatos, California 95032  
Telephone: (408) 477-9690  
Email: allen@allenruby.com

*Attorneys for Defendant*  
*Intuitive Surgical, Inc.*